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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Calling Party Pays Service Option)
in the Commercial Mobile Radio Services)

WT Docket No. 97-207

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COMMENTS OF PAGING NETWORK, INC.

PAGING NETWORK, INC.

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SUMMARY

Paging Network, Inc. ("PageNet"), by its attorneys, hereby submits its Comments on the Federal Communication Commission's ("Commission" or "FCC") *Notice of Inquiry* ("*NOI*") on calling party pays ("CPP") service in the commercial mobile radio services ("CMRS"). PageNet believes that there are potential benefits to allowing wireless subscribers to have the calling party pay for the call through wireless CPP. These benefits can best be realized by allowing wireless CPP to develop in the marketplace. Given that, the FCC should not take any regulatory action to proceed to implementation of wireless CPP in the U.S., but rather, should allow marketplace forces to take their course as to how wireless CPP develops.

Consumers may benefit from the availability of a wireless CPP option. Billing the calling party is a norm in the wireline network. Having a similar option consistently available with all telecommunications services, including wireless, allows wireless customers to *choose*, just as wireline subscribers now do, whether they do or do not want to pay for calls received, as opposed to being *required* in every instance to pay for such calls. PageNet's market trials for CPP-based paging services in the Ameritech region also suggest to PageNet that CPP may be a viable niche wireless offering, serving lower income users, consumers with credit problems, or occasional users of wireless services.

However, wireless CPP is a CMRS service whose development is best left to the marketplace. As a CMRS service, wireless CPP is not generally subject to state regulation, and the FCC has forborne from directly regulating CMRS. Just as the Commission's deregulatory approach to CMRS has allowed competition to grow in two-way wireless services such cellular, PCS and wide-area SMR, leaving wireless CPP free from

regulatory interference is the best approach to realizing any public interest benefits from wireless CPP service.

There are many hurdles to acceptance of wireless CPP in the U.S. A key issue is consumer education. Customers calling wireless CPP subscribers will have to be notified by pre-recorded message or bong tone that there is a charge and, in some instances, how much it is. CMRS carriers also will have to obtain the caller's consent, such as having the caller push a key, to indicate acceptance of the charge. Rather than increase usage, these protections could deter usage. Moreover, the potential costs for U.S. telecommunications carriers to establish a ubiquitous, functional CPP-calling system on a local, regional or nationwide basis are enormous. Carriers will have to spend money to establish billing and collection arrangements with all carriers and service providers, and it is not clear that this is logistically, economically, or practically possible.

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To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's ("Commission" or "FCC") rules, 47 C.F.R. §§ 1.415 and 1.419, hereby submits its Comments in the above-captioned proceeding.¹

As set forth below, PageNet supports the Commission's objective of promoting competition in the provision of commercial mobile radio services ("CMRS") in the local exchange telephone market. *NOI* at ¶ 1. PageNet also shares the Commission's goal of growing the wireless marketplace both in terms of subscribers, and subscriber options such as calling party pays ("CPP"). CPP affords the wireless community the ability to have calls charged to the calling party and, thus, to have similar billing options available consistently across all telecommunications services, including wireless. To that end, PageNet endorses the efforts of individual carriers to explore consumer demand for wireless CPP services.

¹ See *Calling Party Pays Service Option in the Commercial Mobile Radio Services*, Notice of Inquiry, WT Docket No. 97-207, FCC 97-341, released October 23, 1997 ("*NOI*").

However, PageNet strongly believes that any action by the Commission (or other regulatory agencies) to mandate the availability of a CPP service option for paging and other CMRS services would be inappropriate. *Cf. NOI* at ¶ 5. Rather, consistent with the FCC's policy of letting competitive markets operate without unnecessary regulatory interference, the FCC should let the market decide the extent to which wireless CPP is a beneficial service and is available.

I. INTEREST OF PAGENET IN THIS PROCEEDING

PageNet is the largest paging company in the nation and, through its subsidiaries, serves over 10 million subscribers. PageNet has direct experience with CPP services. In 1996, PageNet began market trials for a CPP-based paging service called Value Page™ in conjunction with Ameritech Corp. ("Ameritech") in three test markets — Chicago, Detroit and Indianapolis. These market trials are ongoing. Internationally, PageNet also has marketed a CPP service option for paging customers in Spain. PageNet thus has experience with implementation of, and some understanding of consumer demand for, CPP paging and messaging. With this experience, PageNet is well-positioned to provide the Commission with valuable information on whether FCC intervention to make wireless CPP service more available is either necessary or appropriate. See *NOI*, at ¶ 5.

II. THERE ARE CONSUMER BENEFITS FROM HAVING A WIRELESS CPP OPTION AVAILABLE

The Commission inquiry is in part intended to explore whether the public would benefit from greater availability of CPP in wireless services. *NOI* at 3. PageNet believes that there are benefits. Billing the calling party is, after all, a norm for calls placed on the wireline network, and it is good public policy to have that billing option consistently available across all telecommunications services, including wireless. That way, just as wireline subscribers

do today, wireless subscribers can choose whether they do or do not want to pay for calls received, as opposed to being required in every instance to pay for such calls.²

Moreover, the PageNet trials in the Ameritech region have demonstrated to PageNet that CPP may be a viable niche wireless offering, serving the lower income consumers, consumers with credit problems, or occasional users of wireless services. PageNet's Chicago data also indicates that a substantial majority of CPP users are individual consumers, not businesses. On average, CPP paging users in PageNet's Chicago trial receive substantially less than half the calls traditional subscribers receive.

As CPP has evolved, it is in significant respects a premium service. The per-call charge for the airtime and billing services rendered by PageNet in Chicago is \$.25. Source One, another company offering CPP in the Chicago area, charges \$.35/page. A traditional paging user receives approximately 60 pages on average, and pays in the \$8.00 to \$12.00 range for local service. Under PageNet's CPP, callers to that traditional user would pay \$15.00, and under Source One's CPP, callers would pay \$21.00, assuming the same number of calls.³ Yet, for lower volume wireless subscribers, CPP may nonetheless prove economical given the lower apparent overall call volumes, and the fact that all or some of the service costs are borne by the calling party rather than the wireless subscriber. Of course, whether these services ultimately succeed in the market is yet to be seen.

² To the consumer who needs to talk to a CPP mobile subscriber, on the other hand, a CPP charge is not "optional." Absent agreeing to pay the charge to call a CPP mobile subscriber, a consumer who needs to talk to a CPP mobile subscriber has no other option to reach the mobile subscriber.

³ Charges to calling parties on a per-call basis are currently higher than average charges to traditional paging customers because of the added expenses associated with per-call "casual" billing, the costs associated with providing intercept messages, and the substantial costs of leakage. See Section V.

III. CALLING PARTY PAYS IS A CMRS SERVICE WHOSE SUCCESS OR FAILURE SHOULD BE DETERMINED BY THE MARKET

A. Wireless CPP Is A CMRS Service Whose Development Should Not Be Regulated

An overarching question presented in the *NOI* is whether CPP will make wireless service more competitive with wireline services and the degree to which federal regulation is necessary to achieve those additional competitive benefits. The answer to those questions can only come from the marketplace. Therefore, the Commission should let the marketplace provide the answer on its own. Indeed, it is worth remembering that the current wireless two-way market practice, where the mobile subscriber typically pays the CMRS carrier for both incoming and outgoing calls, is the result of marketplace development unhindered by regulatory interference.

Certainly, there are already clearly aspects of both wireless and wireline services which compete with each other. For example, a customer today can choose to place the same two-way voice call over a fixed line, or may choose to place that same call over a wireless facility. In the purely wireline context, it is the carrier of the calling party, or the originating carrier, which offers the service end-to-end and which, therefore, bills the calling party. In the wireless context under CPP, however, it is the wireless carrier or, in other words, the terminating carrier, which offers the wireless service to the calling party and which bills the caller. Notably, then, not just the billing, but the customer-carrier relationship itself, is different. In the CPP context, the calling party essentially becomes an occasional or "casual" customer of the wireless carrier for airtime services, in addition to the customer of the wireline or other carrier for facilities over which the call originates.

CPP, in this context, is a CMRS offering, not a landline offering.⁴ This distinction must be clearly understood before the Commission goes further in its thinking about CPP, because it is the principal determinant of the regulatory authority of both federal and state commissions over CPP, and determines the appropriate degree and scope of permissible regulation. As a CMRS service, CPP is not generally subject to regulation. Section 332 of the Communications Act of 1934 precludes most regulation at the state level, and the FCC has forborne from the direct regulation of CMRS.

It is also worth remembering that achieving a "balance of traffic" (*e.g.* as many incoming as outgoing calls for wireless services) is not, in and of itself, a meaningful objective for regulators or for the wireless industry. The market, and technological evolution will determine the appropriate balance of traffic. In paging right now, for example, virtually all of the calls are placed to the wireless subscriber.⁵ While, with two-way paging, that will change, there is no formula which should or will dictate that change. Likewise, with broadband service, the traffic flows should be dictated by consumer preferences, not by any preconceived notion that a "balance of traffic" is somehow optimal.

The real measure of the success of the industry is its phenomenal and continued growth. The current wireless marketplace is extremely competitive and is becoming more so. Over the past several years, the Commission has ensured that there is a plethora of spectrum available for carriers to offer wireless services to both mobile and fixed wireless subscribers.

⁴ This is made clear by the fact that CPP is, as a practical matter, the result of a choice made by a mobile subscriber in its relationship with its CMRS carrier.

⁵ In the broadband context, a large number of the calls *received* are to the cellular/PCS voicemail or pager equivalent, as when the phone is turned off to conserve battery life, or the cellular/PCS customer chooses not to be interrupted to answer the call.

For example, the paging marketplace is already vigorously competitive, with an average of over 18 paging licensees in each of the 25 largest U.S. cities.⁶ With the continuing build out of the PCS licensees, and the ongoing maturation of wide-area SMR services, the two-way mobile services marketplace — traditionally occupied by the two cellular licensees per statistical area — is becoming increasingly competitive.⁷ The maturation of the CMRS industry has been the result not only of spectrum allocations (*e.g.*, PCS, 800 MHz SMRs, 28 GHz), but also of deregulation (*e.g.*, making it easier for both broadband and narrowband licensees to use their spectrum to provide fixed as well as mobile services). The rates for two-way wireless services have decreased sharply since PCS's introduction, and the diversity in service offerings has increased. Paging prices have also declined considerably in recent years. Calling party pays is just one of the services that have been introduced in the last couple of years, and certainly more will follow.

In short, the growth of the CMRS industry, in recent years in particular, has proceeded largely without regulatory interference. The emergence of a robust marketplace under such conditions counsels strongly against FCC intervention with respect to the wireless CPP service option. Accordingly, the Commission should initiate no action at this time.

B. The Experience Outside the U.S. with Calling Party Pays Is Not a Predicate for Regulatory Involvement in the U.S.

Differences in the way in which wireless services have evolved in this country cast some doubt on the reasonableness of extrapolation of other countries' experiences to the U.S.

⁶ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, Second Report, FCC 97-75, released March 25, 1997 at p. 31, n.145 ("CMRS Second Annual Assessment of CMRS Competition").

⁷ *See id.* at pp. 42-51.

For example, most other countries have a few carriers, or only one. These wireless carriers do not face the economic issues, such as the need for multiple billing agreements that all U.S. carriers face in our multicarrier environment. *See* Section V, hereafter.

In addition, the initial purposes of wireless services was different in some other countries than in the United States, and yielded a different marketing approach from the onset. In some countries, for example, cellular was intended as a substitute for wireline service, either because the wireline service was of poor quality under certain circumstances, or in some instances nonexistent. People in those countries, of necessity have depended on cellular phones as their primary communications devices. The resulting reliance on wireless services has stimulated adoption of personal habits that have tended to compensate for technical battery limitations of wireless devices. For example, many Europeans using cellular phones leave them on during the day, and recharge them every night. Certainly this is a habit those living in the U.S. have not adopted, because we do not have a need. The simultaneous health of both wireline and wireless services has allowed us the convenience of wireline for the majority of our incoming calls, and the convenience of wireless when away from our offices and homes for outgoing calls.

It is not at all clear that CPP would have a demonstrative effect on the habits of United States subscribers to CMRS services. But that is for the market to determine — not regulators.

IV. ARTIFICIAL BARRIERS HAVE NOT IMPEDED CPP DEVELOPMENT IN THE U.S. TO DATE

The *NOI* (at ¶ 8) inquires as to whether artificial barriers have prevented the introduction of CPP. The *NOI* answers the question itself. The Commission's discussion is replete with references to CPP trials in the U.S. *See NOI* at ¶¶ 6-9. None of these would

have come to pass if in fact the LECs or state commissions in those states were erecting unreasonable or artificial barriers to the use of CPP. Furthermore, although the CPP trials described in the *NOI* appear to be between incumbent local exchange carriers and their wireless affiliates, there are CPP trials such as PageNet's ongoing today.

In order to offer CPP, PageNet negotiated a billing arrangement with Ameritech, under which Ameritech agreed to bill its subscribers for CMRS calls placed to pagers, on PageNet's behalf. Ameritech also agreed to provide PageNet with collection services, under terms and conditions that Ameritech represented are like those it charges providers who handle casual calling traffic, such as some switchless interexchange resellers and payphone providers.

In short, through the cooperative efforts of PageNet and Ameritech, PageNet has been able to offer CPP on a trial basis to subscribers, allowing PageNet and PageNet subscribers to determine the degree to which this service is a viable option without artificial impediments.

V. WIRELESS CPP FACES HURDLES TO ACCEPTANCE IN THE UNITED STATES

Notwithstanding the fact that no artificial barriers to wireless CPP appear to exist at this time, the widespread availability of CPP is not a foregone conclusion. The market, and carriers participating in the market, have substantial issues to address in determining how CPP is offered.

The first issue appears to be one of consumer education. For example, today, when a person calls a mobile phone or pager from a landline phone in the same area code, he or she does not typically expect to pay any charge for using that service other than the charge associated with his or her local phone bill (or payphone charge for a local call if calling from

a payphone).⁸ Under CPP, however, if that person happens to be calling a CPP subscriber, he or she will have to pay an "extra" CPP charge to make the call.⁹ Even if the consumer is willing to pay the CPP charge, he or she also will have to listen to a pre-recorded "notification" of CPP charges, or some other indication that the call is a CPP call (such as a bong tone).¹⁰ Finally, to establish a legally binding relationship with the caller, the CMRS carrier will have to obtain the caller's consent to accept the CPP charge, such as having the caller push a key designated in the pre-recorded notification to indicate acceptance of the charge.¹¹ Rather than increase usage of mobile communications, these protections may deter usage of CMRS services. In the context of the PageNet Chicago trial, for example,

⁸ It is not clear how CPP will work from payphones, as there is no present mechanism which allows payphone providers to know when the correct coinage has been deposited.

⁹ See, e.g., *Calling people who have a cell phone could cost you, not them, under proposed new pricing plan*, Leslie Gornstein, THE ORANGE COUNTY REGISTER, Oct. 5 1997 at K09 ("[t]he telecommunications industry is about to unleash a new breed of hassle for anyone who owns a phone . . . The industry has dubbed the beast 'CPP' or Calling Party Pays"); *Page me (but you'll pay for it)*, Steve Homer, THE INDEPENDENT (LONDON), Aug. 12, 1997 at N2 (stating that with calling party pays for paging, "[a]fter you have paid out around pounds 75 for a pager you never have another bill to pay, apart from buying batteries -- but pity any sucker to whom you give your pager number, because the system is paid for by the people who call you.").

¹⁰ Some states have found that "acceptance by silence" of a CPP charge to be insufficient to protect consumers, and expressed a preference for positive acceptance through a "prompt" method, i.e. that the CPP call be completed only if the customer affirmatively responds to a prompt by pressing a particular key. States view the prompt method as preferable from a consumer protection perspective because "it leaves no doubt that the landline customer wants to have the call completed. See *Investigation of the Commission's Own Motion into the Regulation of Cellular Radiotelephone Utilities; and Related Matters*, Decision Granting in Part Petition to Modify Decision 90-06-025, 1997 Cal. PUC LEXIS 536, *12-*15 (Calif. Pub. Util. Comm'n dated June 25, 1997) ("*California PUC CPP Market Trial Order*").

¹¹ See *id.*

PageNet does not know whether the number of calls per paging subscriber is less than half the usage of its traditional user because of the general lack of familiarity and comfort with CPP, or whether these subscribers in fact have need to receive calls substantially less often.

Secondly, the potential costs imposed on U.S. telecommunications carriers to establish a ubiquitous, functional CPP-calling system on a local, regional or nationwide basis are enormous. The *NOI* recognizes that, in order to implement CPP fully, wireless carriers will have to spend money to establish billing and collection arrangements with all of these carriers and service providers. These arrangements are necessary to support the characteristics of CPP calling analogous to the "casual calling" associated with much payphone usage, where the caller is not a "subscriber" to the service provider.

In the absence of having agreements with all the multiple providers, some calls may be completed, but CMRS carriers may not be able to bill the caller. For services ongoing in an incumbent local exchange territory, these leakage points are numerous, as the *NOI* acknowledges. Such points may include calls from hotels, motels, hospitals, pay phones, prisons, all businesses and residences with pay per call blocking, calls originating from WATS lines, independent phone companies, and competitive local exchange companies, as well as calls from other wireless carriers. Absent costly sophisticated call-blocking mechanisms (which will not offer those calling wireless subscribers the ubiquitous service to which they are accustomed), CMRS carriers will have no way to prevent the completion of calls from leakage points to their CMRS customers. The carrier or carriers providing the CPP service would have to absorb the costs of all such calls. PageNet's Chicago experience indicates that a significant percentage of the calls that are currently completed fall into the leakage category.

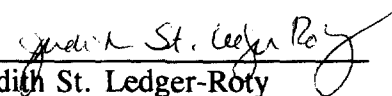
Even limited to a single regional service area of a CMRS carrier such as an MTA or BTA, the potential for lost revenue from all of these "leakage" sources is massive. Furthermore, according to the *CTIA Report*, CPP cannot, as a practical matter, be expanded until the leakage problem is solved. This problem may be "impossible" to solve,¹² but the market must be permitted to decide.

VI. CONCLUSION

For the foregoing reasons, the Commission should not proceed to take any action to implementation of CPP by wireless carriers in the United States. Rather, the Commission should treat the CMRS industry as it historically has done and rely upon market forces to dictate whether CPP will be made widely available.

Respectfully submitted,

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¹² See *id.* at pp. 4, 22 ("[p]roblems of leakage from pay phones and hotel phones may be impossible to solve. Even when it is theoretically possible to bill back (*e.g.*, from a residential line), the wireless carrier will be required to have business agreements with every carrier in the U.S. from which CPP calls can be made (*e.g.*, LECs and competing wireless carriers)").